DOCKET FILE COPY ORIGINAL

WHAT OF IT SECRETARY

ANN BAVENDER* ANNE GOODWIN CRUMP VINCENT J CURTIS JR RICHARD J. ESTEVEZ PAUL J. FELDMAN ERIC FISHMAN RICHARD HILDRETH FRANK R. JAZZO ANDREW S. KERSTING' EUGENE M. LAWSON, JR HARRY C. MARTIN GEORGE PETRUTSAS LEONARD R. RAISH JAMES P. RILEY KATHLEEN VICTORY HOWARD M. WEISS

NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

PEDIGRAL COMMENSATIONS COMMENSARY office@fhh-telcomlaw.com

April 20, 1998

FRANK U. FLETCHER (1939-1985) ROBERT L. HEALD (1956-1983) PAUL D. P. SPEARMAN (1936-1962) FRANK ROBERSON (1936-1961) RUSSELL ROWELL (1948-1977)

RETIRED EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS SHELDON J. KRYS U. S. AMBASSADOR (ret.)

> OF COUNSEL FRWARD 24 OF THE MITCHELL LAZARUS EDWARD S. O'NEILL"

JOHN JOSEPH SMITH WRITER'S DIRECT

VIA HAND DELIVERY

Magalie Salas, Esq. Federal Communications Commission 1919 M Street, N.W. Room 222

Washington, D.C. 20554

Petition for Partial Reconsideration in Re:

MM Docket No. 87-268

Dear Ms. Salas:

Enclosed for filing are an original and four copies of a petition for reconsideration submitted by Warwick Communications, Inc., license of KFXK-TV, Longview, Texas in the above-referenced docket.

Should there be any questions, please contact the undersigned counsel.

HMW:ljs Enclosure

cc: Mr. Roy J. Stewart (w/enc.)(Hand Delivery)

Ms. Barbara A. Kreisman (w/enc.)(Hand Delivery)

Mr. Bruce Franca (w/enc.)(Hand Delivery)

No of Copies recid. List 4800E

ORIGINAL

			RECEIVED
In the Matter of)		APR 2 0 1998
Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service))	MM Docket No. 87-268	DEFICE OF THE SECRETARY

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

Warwick Communications, Inc., licensee of Television Station KFXK-TV, Longview.

Texas ("Warwick"), by its counsel, hereby seeks partial reconsideration of the *Commission's Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24 (released February 23, 1998) (the "MO&O"), in the above-captioned proceeding. Warwick asks the Commission to review a proposal for substituted DTV Channel 31 only because the Commission seems not to have done so in the MO&O. In support hereof, the following is stated:

I. Preliminary Statement

1. On June 13, 1997, Warwick filed a petition for partial reconsideration of the *Sixth Report and Order*. Therein, it proposed an alternate DTV channel allotment of Channel 26 for KFXK, urging that the DTV channel specified in the Table of Allotments, Channel 52, would compel Warwick to construct its DTV facilities twice because Channel 52 is outside the "core spectrum" allocated by the Commission for television. On July 8, 1997, Fox Television Stations, Inc., submitted an objection to Warwick's petition. Fox provided no specific basis for its objection, other than to note that its

"preliminary analysis raises some concerns about interference to KRIV's Channel 26 NTSC operations, particularly in light of the relatively flat terrain in southeastern Texas."

2. On November 20, 1997, the Association for Maximum Service Broadcasters, Inc. ("MSTV") filed an Ex Parte Submission, proposing numerous changes in the DTV Table of Allotments. The Commission invited responses by Public Notice released December 2, 1997. Because MSTV had not incorporated Warwick's proposed change for KFXK (indeed, it did not reference it at all), Warwick filed further comments on December 17, 1997. Therein, Warwick proposed that KFXK's DTV allotment be Channel 31. Warwick represented that this in-core allotment had been reviewed by MSTV, who authorized Warwick to state that the new proposed channel

"is consistent with the standards used to develop MSTV's recommended improvements in the Table, and would not cause cognizable interference to other NTSC or DTV stations."

3. In an Engineering Statement attached to Warwick's comments, its consultant, Joseph Davis, stated that he had conducted interference studies "using an application of the terrain-dependent Longley-Rice methodology, similar to that employed by the Commission in developing the DTV Table of Allotments," and concluded that DTV Channel 31 would more than replicate coverage of NTSC Channel 51. Further, his conclusion was that Channel 31 would cause no appreciable additional interference to other affected NTSC and DTV assignments. (A copy of Warwick's comments and Davis' Engineering Statement is attached hereto for reference.)

¹ The Channel 26 proposal was no longer viable because the MSTV plan assigned Channel 26 to Station KLTV, Tyler, Texas.

4. No other comments related to KFXK's DTV allotment were submitted to the Commission in December. However, for reasons that are unclear, the MO&O did not address Warwick's Channel 31 proposal.² Instead, the MO&O simply recited that Fox objected to Warwick's Channel 26 proposal and that "we are not making changes merely because a broadcaster received an out-of-core channel." Accordingly, it denied Warwick's petition for reconsideration seeking a Channel 26 DTV allotment. (At 194, ¶647-48.)

II. The Proposed Channel 31 Allotment Should Be Adopted

- 5. Whatever the reason that the Commission ignored Warwick's Channel 31 proposal in the MO&O (even if it only reflected inadvertence), Warwick here again seeks comprehensive consideration of the proposal. Attached is a new Engineering Statement from Mr. Davis, which again asserts that a DTV Channel 31 allotment would be compatible in every sense with the Commission's DTV objectives. Not only would it replicate NTSC Channel 51, but, as MSTV agreed, it would cause no cognizable interference to other stations or allotments.
- 6. Mr. Davis also submits a further rationale for the proposed reallotment.

 Substituting DTV Channel 31 for DTV Channel 52 would eliminate the possibility of short spacing and interference to a proposed and otherwise viable NTSC facility on Channel 54 at Longview, Texas. Two applications have been filed for that facility (BPCT-960920II and BPCT-960920LK) and a joint request for approval of a settlement between the parties was filed on January 30, 1998. The Commission's Sixth Report and Order undertook to attempt to protect

² The text of the MO&O contains no reference to Warwick's December 1997 comments. Appendix A to the MO&O, which purports to list all parties making submissions to the FCC, references Warwick as a party filing a response to the December Public Notice, but again no reference to the Channel 31 proposal is contained in the MO&O's text.

NTSC applications submitted by September 20, 1996. 12 FCC Rcd at 14635, ¶104. Moreover, the MO&O repeatedly confirmed that the Commission fully intended to protect such applications. See <u>e.g.</u>, MO&O at ¶¶571, 575, 608. 627.

- 7. Yet, the MO&O does not in fact protect the Channel 54 application if Channel 52 stands as Warwick's DTV channel. As Mr. Davis explains, the proposed Channel 54 facility would have to be located at least 31.4 km from KFXK's transmitter site under §73.610(d). This conflicts with the required "taboo" spacing between DTV Channel 52 (co-located (as it must be) with NTSC Channel 51) and Channel 54. Section 73.623(d), which implements this separation, requires a distance of less than 24.1 km or more than 96.6 km. The former cannot be satisfied if the 31.4 km spacing standard is enforced, while the latter option would mean that the new Longview facility on Channel 54 would not cover its community of license with the requisite city-grade signal.
- 8. This potentially fatal roadblock to a new service to Longview can be removed if DTV Channel 31 is utilized in lieu of Channel 52. Moreover, placing KFXK's allotment within the core would be consistent with the MO&O's promise to move DTV allotments within the core if they become available during the transition to DTV. See MO&O at 23, ¶55. Here, Channel 31 is available at Longview now and there is therefore no rational reason not to utilize it now, in lieu of first forcing Warwick to build on an out-of-core channel. Reconsideration will not disrupt the Table or inconvenience other licensees -- the concerns which apparently led the Commission in the MO&O generally to reject moves inside the core at the MO&O stage. (See, e.g., MO&O at 75, ¶191.)³

³ It should be noted that the MO&O did move a number of DTV allotments within the core where special circumstances such as limited economic resources or DTV-to-DTV

III. Warwick's Petition Is Procedurally Acceptable

9. On the merits, Warwick's proposal for further reconsideration is therefore a "winwin" proposition. It also meets the procedural requirements of Section 1.429 of the rules.

Warwick renews the request for Channel 31 in a second petition for reconsideration because the MO&O did not consider the Channel 31 proposal on its merits, although it was timely filed in response to the Commission's Public Notice. The switch from the Channel 26 proposal made in Warwick's prior petition for reconsideration to the Channel 31 alternative reflected changes in the FCC's proposed DTV Table of Allotments which could not have been anticipated and which made Channel 26 unavailable to Warwick. (See Engineering Statement in Warwick's December 1997 comments at 2, attached hereto.) In sum, Warwick did everything it could timely to present a viable proposal to the Commission and then timely modified it to reflect "modified rules adopted by the original order" (see §1.429(i) of the rules). Reconsideration is therefore now appropriate procedurally and justified substantively.

interference justified it. See, <u>e.g.</u>, MO&O at 86-87, \P 234-236, 89-90, \P 247-51, and 91-92, \P 258-59.

WHEREFORE, in light of the foregoing, Warwick Communications, Inc., respectfully requests that the Commission grant partial reconsideration of the MO&O by substituting DTV Channel 31 for Channel 52 at Longview, Texas.

Respectfully submitted.

WARWICK COMMUNICATIONS, INC.

By:______Howard M. Weiss

Fletcher, Heald & Hildreth, P.L.C. 1300 N. 17th Street 11th Floor Arlington, Virginia 22209 (703) 812-0400

April 20, 1998

Its Counsel

CERTIFICATE OF SERVICE

I, Lorretto Scott, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 20th day of April, 1998, copies of the foregoing "Petition For Partial

Reconsideration" were hand delivered to the following:

Roy J. Stewart, Chief*
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554

Barbara A. Kreisman, Chief* Video Services Division Mass Media Bureau Federal Communications Commission 1919 M Street, N.W., Room 702 Washington, D.C. 20554

Mr. Bruce Franca, Assistant Chief*
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W., Room 416
Washington. D.C. 20554

Lorretto Scott	

*Hand Delivered

ORIGINAL

ENGINEERING STATEMENT

prepared for

Warwick Communications, Inc.

KFXK (TV) Longview, Texas

This engineering statement has been prepared on behalf of Warwick Communications, Inc.

("Warwick"), in support of a Petition for Reconsideration of the Federal Communications

Commission's Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order

("MO&O") in MM Docket 87-268.\(^1\) Warwick is the licensee of television station KFXK,

Longview, Texas, and has previously filed a Petition for Reconsideration of the Sixth Report and

Order ("6th R&O") and comments on filings addressing digital television ("DTV") allotments (as

discussed in the Commission's Public Notice of December 2, 1997). Warwick's petition requests

an alternate digital television ("DTV") channel allotment for KFXK.

Discussion

The MO&O specified a core set of television channels for ultimate DTV use, thus permitting

recovery of part of the existing television broadcast spectrum. The MO&O states that the core will

consist of channels 2 to 51. The DTV table of allotments was prepared to minimize the use of

channels 60 to 69 to facilitate early recovery of these channels. Further, allotments on channels 52

to 59 have been avoided where possible. Stations with DTV allotments on channels 52 to 69 will

be required to change channels at the conclusion of the transition period. Accordingly, the

MO&O's DTV allotments have been made on channels 2 to 51 wherever possible.

For the case at hand, DTV channel 52 has been allotted for use by KFXK (NTSC channel

51). KFXK's use of DTV channel 52 would extend only through the transition period, following

which Warwick would be required to move the KFXK DTV facility to an as-yet undetermined

channel within the core. At that time, KFXK could use its existing NTSC channel 51 as its DTV

channel. However, Warwick will in any event ultimately have to change the channel of its DTV

facility following the transition period, unless it is assigned an alternative DTV channel within the

core now.

See FCC 97-115 Advanced Television Systems and Their Impact upon the Existing Television Broadcast

Service, released February 23, 1998.

(page 2 of 4)

An engineering review of the DTV allotments and NTSC assignments in the region surrounding Longview showed that an alternate channel could be used for KFXK. Interference studies were performed using an application of the terrain-dependent Longley-Rice methodology, similar to that employed by the Commission in developing the DTV table of allotments. ² The studies showed that channel 31 could be used as KFXK's DTV channel at 114 kW effective radiated power. DTV channel 31 at Longview would provide coverage to over 100 percent of the area and population of the interference-limited KFXK NTSC channel 51.

The interference study also examined the potential impact the use of DTV channel 31 at Longview would have on other DTV allotments and existing NTSC assignments. Pertinent co-channel and first adjacent channel NTSC and DTV assignments (and taboo channel NTSC assignments) were studied. The interference studies showed that only a negligible amount of additional interference is predicted to occur to other assignments. Specifically, interference to KMSS-TV (NTSC channel 33, Shreveport, LA), would increase by only 0.05 percent (population), when interference already predicted from other assignments is considered. Similarly, interference to KLAX-TV (NTSC channel 31, Alexandria, LA) and KOET's DTV channel 31 (Eufaula, OK) would increase by only 0.02 percent of the population covered by each of these stations when interference already predicted from other assignments is considered.

In the selection of a DTV channel for KFXK, consideration should also be given to the impact of the DTV allotment on vacant NTSC television channels for which applications are pending. Applications are pending at the Commission for a new NTSC station for a vacant channel 54 allotment at Longview, Texas (file numbers BPCT-960920II and BPCT-960920LK). As noted

²The time-shared "HDTV" computer program (as revised April, 1998) offered by the National Telecommunications and Information Administration's *TA Services* in Boulder, Colorado was employed as the method for coverage and interference prediction. The HDTV computer program has been developed in close coordination with the Commission's OET staff, and utilizes methodology similar to the computer program used by the Commission to develop the DTV table of allotments. Predictions included "clipping" the extent of protected coverage as specified under §73.623(c)(2) at the Grade B contour distance for analog stations per §73.684 and at the DTV coverage contour distance for DTV assignments per §73.625(b). It is believed that the HDTV program offered by *TA Services* is compliant with the FCC's Office of Science and Technology Bulletin 69 *Longley-Rice Methodology for Evaluating TV Coverage and Interference* ("OET-69"), July 2, 1997.

(page 3 of 4)

earlier, KFXK's NTSC channel is 51, also serving Longview. The minimum distance separation requirements for NTSC stations three channels removed (i.e.: the "taboo" relationship between channels 51 and 54) is 31.4 km under §73.610(d). Accordingly, in order for a channel 54 NTSC station to be authorized at Longview, Texas, its transmitter site must be a minimum of 31.4 km from that of KFXK. A large NTSC to NTSC fully-spaced site area for channel 54 does exist that would be able to provide principal community coverage to Longview.

However, with the NTSC channel 54 facility located over 31.4 km from the KFXK NTSC channel 51 transmitter, as required by §73.610(d), the spacing between KFXK DTV channel 52 (co-located with NTSC channel 51) and the vacant NTSC channel 54 then becomes problematic. Specifically, using the DTV-NTSC spacing criteria of §73.623(d) (requiring a distance of less than 24.1 km or more than 96.6 km), there would be no site area for the vacant NTSC channel 54 that would meet both §73.610(d) and §73.623(d) and still provide principal community coverage to Longview. For instance, locations within 24.1 km as permitted by §73.623(d) would not meet the minimum distance of 31.4 km required by §73.610(d). A site located at a much greater distance of 96 km would satisfy both §73.623(d) and §73.610(d), but would not provide principal community coverage of Longview and may not be fully spaced to other stations.

Changing the KFXK DTV channel from 52 to 31 would eliminate this potential obstacle to the use of NTSC channel 54 at Longview, as there is no "taboo" relationship between these channels, and would be in the public interest in that an additional television service would be brought to the community.

Summary

Based on these studies, it appears that KFXK Longview, TX could use DTV channel 31 in lieu of the allotted DTV channel 52 and provide over 100 percent replication of the population coverage as the existing KFXK NTSC channel 51. Only negligible interference is predicted to be caused to other DTV allotments or NTSC assignments by operation of KFXK on DTV channel 31. The use of DTV channel 31 for KFXK would not require *Warwick* to later change channels, as is

(page 4 of 4)

the case with the MO&O's allotment of channel 52. Further, the use of DTV channel 31 at

Longview would not impede the use of vacant NTSC channel 54 at Longview.

Certification

The undersigned hereby certifies that the foregoing statement was prepared by him or under

his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Davis is a

principal in the firm of Cavell, Mertz & Perryman, Inc., is a Registered Professional Engineer in

Virginia, holds a Bachelor of Science degree from Old Dominion University in Electrical

Engineering Technology, and has submitted numerous engineering exhibits to various local

governmental authorities and the Federal Communications Commission. His qualifications are a

matter of record with that agency.

Joseph M. Davis, P.E

April 20, 1998

Cavell, Mertz & Perryman, Inc.

10300 Eaton Place Suite 200

Fairfax, VA 22030

(703) 591-0110

ORIGINAL

ANN BAVENDER' ANNE GOODWIN CRUMP" VINCENT J. CURTIS, JR. RICHARD J. ESTEVEZ PAUL J. FELDMAN ERIC FISHMAN RICHARD HILDRETH FRANK R. JAZZO ANDREW S. KERSTING EUGENE M. LAWSON, JR. HARRY C. MARTIN J. TODD METCALF GEORGE PETRUTSAS LEONARD R. RAISH JAMES P. RILEY KATHLEEN VICTORY HOWARD M. WEISS

"NOT ADMITTED IN VIRGINIA

halillelijihter

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET ROSSLYN, VIRGINIA 22209-3801

> (703) 812-0400 TELECOPIER (703) 812-0486 INTERNET

office@fhh-telcomlaw.com

FRANK U. FLETCHER (1939-1985) ROBERT L. HEALD (1956-1983) PAUL D. P. SPEARMAN (1936-1962) FRANK ROBERSON (1936-1961) RUSSELL ROWELL (1948-1977)

RETIRED EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS SHELDON J. KRYS U.S. AMBASSADOR (ret.)

> OF COUNSEL EDWARD A. CAINE* JOHN JOSEPH SMITH* MITCHELL LAZARUS*

> > WRITER'S DIRECT

(703) 812-0471

December 17, 1997

VIA HAND DELIVERY

Magalie Salas, Esq. Federal Communications Commission 1919 M Street, N.W. Room 222 Washington, D.C. 20554

Re:

Advanced Television Systems

MM Docket No. 87-268

Dear Madam:

Enclosed for filing are an original and nine copies of comments responsive to the Commission's December 2, 1997, Public Notice in the above-referenced rulemaking proceeding.

If there are any questions, please contact the undersigned.

Sincerely,

Howard M. Weiss
Counsel to Warwick
Communications, Inc.

HMW:ljs

Enc.

cc: All Parties on Certificate of Service (w/enc.)

"PLEASE STAMP"
AND RETURN
THIS COPY TO
RETCHER, HEALD & HILDRETH

BEFORE THE

Nederal Communications Commission

	WAS	HINGTON, D.C. 20554	PECEIVED
In the Matter of)		** \$ G 1 2
Advanced Television Systems)	MM Docket No. 87-268	OFFICE OF THE SECRETARY
And Their Impact Upon the)		SECRETARY STON
Existing Television Broadcast)		·
Service)		

COMMENTS ON ASSOCIATION FOR MAXIMUM SERVICE BROAD-CASTERS, INC.'S <u>EX PARTE</u> SUBMISSION

Warwick Communications, Inc., licensee of Television Station KFXK-TV, Channel 51, Longview, Texas ("Warwick"), hereby responds to the Ex Parte Submission submitted by the Association For Maximum Service Broadcasters, Inc. ("MSTV") on November 20, 1997 (the "Ex Parte Filing"), pursuant to the Commission's invitation on December 2, 1997 (the "Public Notice"). Warwick proposes that DTV Channel 31 be assigned to KFXK-TV. In support hereof, the following is submitted.

- 1. As outlined in the attached Engineering Statement prepared for Warwick by Joseph Davis, its consultant, the <u>Ex Parte</u> Filing ignores Warwick's pending petition for reconsideration seeking the allocation of DTV Channel 26 in lieu of Channel 52. Instead, MSTV's proposed revised Table (the "Improvements") assigns DTV Channel 26 to KLTV, Tyler, Texas, and leaves Channel 52 as KFXK's DTV allocation.
- 2. In light of MSTV's proposal, Warwick has held discussions with MSTV. The proposal in the attached Engineering Statement -- Channel 31 -- has been checked with MSTV, as have other alternative DTV channel assignments. MSTV has authorized us to state that the proposal is consistent with the standards used to develop MSTV's Improvements and would not cause cognizable interference to other NTSC or DTV stations. We thank MSTV for its cooperation in reaching this solution.
- 3. As Mr. Davis' analysis illustrates, like Channel 26, but unlike Channel 52, Channel 31 is within the Commission's contemplated "core spectrum" and would not present the operational and interference concerns that would arise from the assignment of adjacent Channel

- 52. Further, Channel 31 would replicate KFXK's NTSC facilities 100% and cause only extremely negligible additional interference -- less than 0.1 percent of the total area and population.
- 4. Mr. Davis also offers Channel 47 as a fall-back alternative to Channel 31. Although MSTV has not endorsed this alternative due to co-channel spacing considerations, Warwick submits that it would be preferable to adjacent Channel 52 for the reasons stated in Warwick's petition for reconsideration and above. Again, it would cause no additional interference.
- 5. In sum, Warwick supplements its pending petition for reconsideration in light of MSTV's Ex Parte Filing to propose Channel 31 as its DTV allocation. Warwick urges the Commission, in the absence of interference or other adverse factors, to adopt this proposal, which will assist a small-market stand-alone UHF station to compete in the digital world.

Respectfully submitted, WARWICK COMMUNICATIONS, INC.

Moward M. Weiss

FLETCHER HEALD & HILDRETH 1300 N. 17th Street, 11th Floor Arlington, Virginia 22209

(703) 812-0400

Its Counsel

Dated: December 17, 1997

prepared for

Warwick Communications, Inc.

KFXK (TV) Longview, Texas

This engineering statement has been prepared on behalf of Warwick Communications, Inc.

("Warwick"), in support of comments on filings addressing digital television ("DTV") allotments

(as discussed in the Commission's Public Notice of December 2, 1997) in regard to Warwick's

pending Petition for Reconsideration of the Federal Communications Commission's Sixth Report

and Order ("6th R&O") in MM Docket 87-268.1 Warwick is the licensee of television station

KFXK, Longview, Texas. Warwick's petition requests an alternate DTV channel allotment (channel

26) for KFXK within the core spectrum. The November 20, 1997 Association for Maximum

Service Broadcasters, Inc. ("MSTV") ex parte filing (referenced in the December 2, 1997 Public

Notice) proposes various channel assignment changes to the Commission's DTV allotment table.

The MSTV filing, through a proposed changed channel assignment for another station, would make

the use of DTV channel 26 (as requested by Warwick) inappropriate at Longview. Should the

MSTV changes be adopted by the Commission, Warwick herein requests an alternate DTV channel

that does not conflict with the MSTV proposal and is within the core spectrum.

Discussion

In Warwick's pending Petition, DTV channel 26 is requested for use at Longview in lieu

of DTV channel 52 as assigned by the Commission. Channel 26 is within the core spectrum (i.e.:

either channels 2 to 46 or channels 7 to 51), and would not present the operational difficulties that

would result from the use of DTV channel 52, first-upper adjacent channel to the KFXK NTSC

channel 51 facility.

A review of the MSTV proposal revealed that the MSTV plan assigns DTV channel 26 in

lieu of channel 38 to KLTV (NTSC channel 7, Tyler, Texas). KLTV is 40.1 km from KFXK. At

this distance, the use of DTV channel 26 at Tyler would conflict with Warwick's proposed use of

DTV channel 26 at Longview.

See FCC 97-115 Advanced Television Systems and Their Impact upon the Existing Television Broadcast

Service, released April 21, 1997.

Cavell, Mertz & Perryman, Inc.

(page 2 of 4)

An engineering review of the DTV allotments and NTSC assignments in the region surrounding Longview showed that an alternate channel could be used for KFXK, should MSTV's proposal be adopted. Interference studies were performed using an application of the terrain-dependent Longley-Rice methodology, similar to that employed by the Commission in developing the DTV table of allotments.² The studies showed that channel 31 could be used as KFXK's DTV channel at 114 kW effective radiated power. The DTV channel 31 at Longview would provide coverage to over 100 percent of the area and population of the interference-limited KFXK NTSC channel 51.³

The interference study also examined the potential impact the use of DTV channel 31 at Longview would have on other DTV allotments and existing NTSC assignments. Pertinent co-channel and first adjacent channel NTSC and DTV assignments (and taboo channel NTSC assignments) were studied. The interference studies showed that only a negligible amount of additional interference is predicted to occur to other assignments. Specifically, additional interference to KMSS-TV (NTSC channel 33, Shreveport, LA), would affect 10 square kilometers and no population, when interference already predicted from other assignments is considered. Similarly, additional interference to KLAX-TV (NTSC channel 31, Alexandria, LA), and KOET's DTV channel 31 (Eufaula, OK) would affect only 6 square kilometers of each of these assignments, encompassing a population of 20 and 10 persons, respectively, when interference already predicted from other assignments is considered. Possible interference to KDTN's DTV channel 31 (Denton,

²The time-shared "HDTV" computer program offered by the National Telecommunications and Information Administration's *TA Services* in Boulder, Colorado was employed as the method for coverage and interference prediction. The HDTV computer program has been developed in close coordination with the Commission's OET staff, and utilizes similar methodology as the computer program used by the Commission to develop the DTV table of allotments. Predictions included "clipping" the extent of protected coverage as specified under §73.623(c)(2) at the Grade B contour distance for analog stations per §73.684 and at the DTV coverage contour distance for DTV assignments per §73.625(b). It is believed that the HDTV program offered by *TA Services* is compliant with the FCC's Office of Science and Technology Bulletin 69 *Longley-Rice Methodology for Evaluating TV Coverage and Interference* ("OET-69"), July 2, 1997.

³Under the FCC's plan, DTV channel 31 is used at Denton, Texas, at a distance of 193 km from KFXK, and would cause interference to a DTV channel 31 at KFXK. However, the MSTV plan specifies DTV channel 38 at Denton in lieu of 31, which would not affect the use of DTV channel 31 at KFXK.

(page 3 of 4)

Texas, as assigned in the FCC's table) is not considered, as the MSTV proposal moves the KDTN assignment to DTV channel 38 (which would not be affected).

In each case above, the additional interference to other assignments would affect less than 0.1 percent of the interference-free total area and population. The staff of MSTV have stated, in informal discussions, that the proposed use of DTV channel 31 at Longview does comport with the MSTV plan and methodology for channel selection.

As a final alternative, the engineering study also showed that channel 47 could be used as KFXK's DTV channel at 155 kW effective radiated power. The DTV channel 47 at Longview would provide coverage to over 100 percent of the area and population of the interference-limited KFXK NTSC channel 51. Detailed interference studies (considering both the FCC and MSTV DTV tables) showed that no interference is predicted to be caused to any NTSC assignment or DTV allotment by the use of DTV channel 47 at Longview, TX. Channel 47 will be in the final "core" if the channel 7-51 selection is ultimately made.

Summary

Based on these studies, it appears that KFXK Longview, TX could use DTV channel 31 in lieu of the allotted DTV channel 52 and provide substantially the same area and population coverage as the existing KFXK NTSC channel 51. Only negligible interference is predicted to be caused to other DTV allotments or NTSC assignments. The use of DTV channel 31 for KFXK would not require *Warwick* to later change channels, as is the case with the 6th R&O's allotment of channel 52. Further, the use of DTV channel 31 at Longview would not conflict with MSTV's proposed DTV table changes. Alternately, DTV channel 47 could also be used at Longview.

Certification

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Davis is a principal in the firm of Cavell, Mertz & Perryman, Inc., is a Registered Professional Engineer in

(page 4 of 4)

Virginia, holds a Bachelor of Science degree from Old Dominion University in Electrical Engineering Technology, and has submitted numerous engineering exhibits to various local governmental authorities and the Federal Communications Commission. His qualifications are a matter of record with that agency.

Joseph M. Davis, P.E.

December 17, 1997

Cavell, Mertz & Perryman, Inc. 10300 Eaton Place Suite 200 Fairfax, VA 22030 (703) 591-0110

CERTIFICATE OF SERVICE

I, Lorretto J. Scott, a secretary in the law firm of Fletcher, Hildreth, P.L.C., hereby certify that true copies of the foregoing Comments on Assocation for Maximum Service Broadcasters, Inc.'s <u>Ex Parte</u> Submission was served this 17th day of December, 1997, via Hand Delivery and U.S. Mail:

BY HAND DELIVERY

William Kennard, Esq. Chairman Federal Communications Commission 1919 M Street, N.W. Room 814 Washington, D.C. 20554

Mr. Harrold W. Furchgott-Roth. Commissioner Federal Communications Commission 1919 M Street, N.W. Room 802 Washington, D.C. 20554

Michael Powell, Esq. Commissioner Federal Communications Commission 1919 M Street, N.W. Room 844 Washington, D.C. 20554

Ms. Susan Ness Commissioner Federal Communications Commission 1919 M Street, N.W. Room 832 Washington, D.C. 20554

Ms. Gloria Tristani Commissioner Federal Communications Commission 1919 M Street, N.W. Room 826 Washington, D.C. 20554

BY U.S. MAIL

Jonathan D. Blake, Esq. Covington & Burling 1201 Pennsylvania Ave., N.W. P.O. Box 7566 Washington, D.C. 20044-7566

Lorretto J. Scott